THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 3114 of 1996

Dated: 22-08-2005

Between:

M/s. Shriram Refrigeration Industries & Division of Shriram Industrial Enterprises, New Delhi, rep. by its GPA Sri Dinesh Vijapurkar..

..Petitioner.

And

The Hyderabad Metropolitan Water Supply & Sewage Board represe4nted by its M.D. Khairatabad, Hyderabad and another.

..Respondents.

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ORDER:

Questioning the demand Notice dated 7-2-1996 relating to the sewerage charges issued by the second respondent to it, petitioner, a company incorporated under the provisions of the Companies Act, filed this petition on the ground that it is not utilizing the sewerage facility provided by the respondents as it has its own sewerage plant, and as respondents have not provided any sewerage facility in the area in which its plant is located.

The contention of respondents is that since petitioner is discharging effluents through the nala and is utilizing benefit of the sewerage system it is liable to pay the charges demanded.

The main contention of the learned counsel for the petitioner is that since the petitioner has its own sewerage water treatment plant and is not letting out any sullage water out of its premises, question of its paying sewerage charges to the respondent does not arise. The contention of the learned counsel for respondents is that since the petitioner did not question the vires of Section 55 of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 (for short 'the Act'), which empowers the respondents levying sewerage charges, petitioner is not entitled to any relief. It is also his contention that along with the petition, petitioner filed a petition seeking stay of the notice of demand served on it and that a learned Judge while admitting the writ petition granted stay on condition of petitioner paying half of the amount demanded through the demand notice impugned in this petition and that in a petition to vacate the stay filed by the respondents, petitioner was directed to pay the remaining half of the amount due in three equal instalments, and that petitioner had already paid the amount covered by the demand notice impugned and further contended that there was a revision of rate in 1997 and that petitioner has been paying the revised sewerage charges and so, petitioner is not entitled to any relief.

Section 55 of the Act reads;

> 'Every occupier of both domestic and non-domestic premises shall pay to the Board at the rate not exceeding thirty five per cent of the bill charging for the water consumed or at such rate as may be prescribed by rules, to defray the capital cost of sewerage and sewage treatment works undertaken by the Board

and the operation and maintenance of the sewerage system from time to time:

Provided that no such charges shall be levied in any premises situated in the areas which are not served by the sewerage system of the Board'.

So, it is clear that all the consumers of water supplied by the first respondent Board are liable to pay the sewerage charges irrespective of the fact whether sewerage provided is being used by them or not, if sewerage system provided by the first respondent Board is available in that area.

Though in para 3 of the affidavit filed in support of the petition, it is alleged that the first respondent Board did not provide any sewerage system in its area, petitioner did not file a reply affidavit disputing the contention of the respondents in the counter-affidavit that it is letting out the sullage water in the nala, and that that water is being treated by it. So, prima facie, it has to be taken that petitioner is using the services provided by the respondents and so by virtue of Section 55 of the Act, irrespective of the fact whether petitioner is fully utilizing the sewerage system or not, it is bound to pay the sewerage charges to the respondents. If the petitioner feels that no sewerage system is provided by the respondents, and so, by virtue of the proviso to Section 55 of the Act, it need not pay sewerage charges to the respondents, its remedy is elsewhere, but not by way of a writ petition.

Hence, the Writ Petition is dismissed. No order as to costs.

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22-08-2005

sj